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5 Attorneys for Complainant
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7
8 BEFORE THE
BOARD OF ACCOUNTANCY
9 DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA
10

11 In the Matter of the Accusation) NO. AC-96-31
Against:)
12) STIPULATION TO SURRENDER
DONALD L. SCHWEITZER) OF CERTIFICATE
13 42 Brentwood Drive)
San Rafael, CA 94901)
14)
Certified Public Accountant)
15 License No. CPA 10044)
Respondent.)
16 _____)

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18 IT IS HEREBY STIPULATED by and between Donald L.
19 Schweitzer, the respondent in this proceeding and the Board of
20 Accountancy, State of California, ("Board") by and through its
21 attorney, Jeanne C. Werner, Deputy Attorney General, that:

22 1. Donald L. Schweitzer ("Respondent") has received
23 and read the Accusation which is presently on file and pending in
24 Case No. AC-96-31 before the Board, a copy of which is attached
25 hereto as Exhibit A and incorporated herein. Carol Sigmann,
26 Executive Officer of the Board, is the Complainant in the
27 Accusation, which was filed and prosecuted solely in her official

1 capacity.

2 2. The Board acquired jurisdiction over Respondent
3 because Respondent is a Board licensee and was served with a copy
4 of the Accusation and all other documents required by Government
5 Code sections 11503 and 11505. Respondent has received and read
6 the Accusation, and has timely filed a Notice of Defense. A copy
7 of the Accusation is attached hereto as Exhibit A and
8 incorporated herein.

9 3. Respondent is licensed by the Board under
10 Certified Public Accountant License No. CPA 10044. The license
11 expired on April 1, 1989 because (a) the renewal fee was not paid
12 and (b) required evidence of compliance with continuing education
13 requirements was not submitted. The license renewal fees were
14 paid on March 3, 1994, for the periods April 1, 1989 through
15 March 31, 1995^{1/}. The license renewal indicated compliance with
16 continuing education requirements for all applicable renewal
17 periods. The license again expired for non-payment of renewal
18 fee on April 1, 1995, and was renewed on April 17, 1995 through
19 March 31, 1997. At that time, Respondent requested that the
20 license be placed in retired status. It has not been renewed,
21 but can be renewed during the period of April 1, 1997 through
22 March 31, 2002 as provided by law.

23 4. Respondent understands the nature of the charges
24 alleged in the Accusation and that, if proven at hearing, such
25 charges and allegations would constitute cause for imposing
26

27 1. The licenses are renewed every two years. Respondent's renewal period runs from April 1 of an odd-numbered year through March 31 of the next odd-numbered year.

1 discipline upon Respondent's Certified Public Accountant License
2 issued by the Board.

3 5. Respondent is fully informed regarding the
4 provisions and effects of this Stipulation, which Respondent has
5 carefully read. Respondent is fully aware of his right to be
6 represented by legal counsel in this matter, his right to a
7 hearing on the charges contained in the Accusation, his right to
8 confront and cross-examine witnesses against him, his right to
9 reconsideration, appeal, and any and all other rights which may
10 be accorded him under the California Administrative Procedure Act
11 (Government Code section 11500 et seq.).

12 6. Respondent freely and voluntarily waives each and
13 every one of the rights set forth above.

14 7. Respondent understands that in signing this
15 Stipulation rather than contesting the Accusation, he is agreeing
16 that the Board may issue its order accepting the surrender of his
17 license without further legal process.

18 8. It is acknowledged by the parties that this
19 Stipulation constitutes an offer in settlement to the Board and
20 is not effective until adoption by the Board.

21 9. The parties agree that the Stipulation recited
22 herein shall be null and void and not binding upon the parties
23 unless approved by the Board, except for this paragraph, which
24 shall remain in effect. In the event the Board in its discretion
25 does not approve this settlement, this Stipulation, with the
26 exception of this paragraph, is withdrawn, shall be of no
27 evidentiary value, shall not be relied upon or introduced in any

1 disciplinary action by either party hereto, and shall not be
2 construed as a waiver of Respondent's right to a hearing or as an
3 admission of the truth of any of the matters charged in the
4 Accusation. However, Respondent understands and agrees that in
5 deciding whether or not to adopt this Stipulation the Board may
6 receive oral and written communications from its staff and the
7 Attorney General's office. Communications pursuant to this
8 paragraph shall not disqualify the Board or other persons from
9 future participation in this or any other matter affecting
10 Respondent. Respondent agrees that should the Board reject this
11 Stipulation and if this case proceeds to hearing, Respondent will
12 assert no claim that the Board was prejudiced by its review and
13 discussion of this Stipulation or of any records related hereto.

14 10. The parties agree that facsimile copies of this
15 Stipulation, including facsimile signatures of the parties, may
16 be used in lieu of original documents and signatures. The
17 facsimile copies will have the same force and effect as
18 originals.

19 11. Respondent hereby surrenders Certified Public
20 Accountant License No. CPA 10044 subject to the Board's formal
21 acceptance of said surrender. Upon acceptance of the Stipulation
22 and surrender by the Board, Respondent agrees to surrender and
23 cause to be delivered to the Board both his license and wallet
24 certificate. Respondent further understands that when the Board
25 accepts the surrender of his license, he will no longer be
26 permitted to practice as a Certified Public Accountant in
27 California.

1 12. Respondent fully understands and agrees that in
2 acting upon any application for licensure, relicensure or
3 reinstatement which Respondent ever files in the State of
4 California or in any other state, the licensing entity shall deem
5 all of the charges and allegations contained in Accusation No.
6 AC-96-31 to be true and correct and admitted by Respondent.

7 13. Based upon the foregoing, it is stipulated and
8 agreed that the Board may issue the following as its decision in
9 this case.

10 ORDER

11 IT IS HEREBY ORDERED that Certified Public Accountant
12 License No. CPA 10044 issued to Donald L. Schweitzer is offered
13 to the Board for surrender.

14
15 14. As is evidenced by the signatures below, the
16 parties concur in the issuance of the above order. Respondent
17 swears the following under penalty of perjury:

18 I have carefully read and fully understand the
19 Stipulation and Order set forth above. I understand
20 that in signing this Stipulation I am waiving my right
21 to a hearing on the charges set forth in the Accusation
22 on file in this matter. I further understand that in
23 signing this Stipulation the Board may enter the
24 foregoing Order placing certain requirements,
25 restrictions and limitations on my right to practice in
26 the State of California. I agree that a facsimile copy
27 of this Stipulation, including a facsimile copy of my

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signature may be used with the same force and effect as
the originals.

DATED: 11-10-97


DONALD L. SCHWEITZER
Respondent

DATED: 11-12-97

DANIEL E. LUNGREN, Attorney General
of the State of California


JEANNE COLLETTE WERNER
Deputy Attorney General
Attorneys for Complainant

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(11/4/97)

1 DECISION AND ORDER
2 OF THE BOARD OF ACCOUNTANCY

3 The foregoing Stipulation and Order, in Case No.
4 AC-96-31, is hereby adopted as the Order of the California Board
5 of Accountancy. An effective date of January 7th, 1998,
6 has been assigned to this Decision and Order.

7 Made this 8th day of December, 1997.


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10 ROBERT J. SHACKLETON
11 FOR THE BOARD OF ACCOUNTANCY
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EXHIBIT A

1 DANIEL E. LUNGREN, Attorney General
of the State of California
2 JEANNE COLLETTE WERNER
Deputy Attorney General, State Bar No. 93170
3 Department of Justice
2101 Webster Street, 12th Floor
4 Oakland, California 94612-3049
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5 Fax: (510) 286-4020

6 Attorneys for Complainant

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8 BEFORE THE
BOARD OF ACCOUNTANCY
9 DEPARTMENT OF CONSUMER AFFAIRS
10 STATE OF CALIFORNIA

11 In the Matter of the Accusation) NO. AC-96-31
Against:)
12) AMENDED ACCUSATION
DONALD L. SCHWEITZER)
13 42 Brentwood Drive)
San Rafael, CA 94901)
14)
Certified Public Accountant)
15 License No. CPA 10044)
Respondent.)
16)
17

18 Complainant Carol B. Sigmann, as cause for disciplinary
19 action, alleges:

20 1. Complainant is the Executive Officer of the
21 California Board of Accountancy ("Board") and makes and files
22 this accusation solely in her official capacity.

23 LICENSE INFORMATION

24 2. On or about December 8, 1962, Certified Public
25 Accountant License No. CPA 10044 was issued by the Board to
26 Donald L. Schweitzer ("Respondent"). The license expired on
27 April 1, 1989 because (a) the renewal fee was not paid and (b)

1 required evidence of compliance with continuing education
2 requirements was not submitted.

3 The license renewal fees were paid on March 3, 1994,
4 for the periods April 1, 1989 through March 31, 1995^{1/}. The
5 license renewal indicated compliance with continuing education
6 requirements for all applicable renewal periods.

7 The license again expired for non-payment of renewal
8 fee on April 1, 1995, and was renewed on April 17, 1995 through
9 March 31, 1997. On that date, the license was placed in retired
10 status.

11 STATUTES AND REGULATIONS

12 3. Section 5050 of the California Business and
13 Professions Code (hereinafter "Code") provides, in pertinent
14 part, that no person shall engage in the practice of public
15 accountancy in California unless such person is the holder of a
16 valid permit to practice public accountancy issued by the Board.

17 4. Code section 5051 includes in the definition of
18 the practice of public accountancy any of the following: holding
19 out to the public as skilled, qualified and ready to render
20 professional service as a public accountant for compensation;
21 maintaining an office for the transaction of business as a public
22 accountant; and offering to prospective clients to perform, for
23 compensation, defined professional services.

24 5. Code section 5055 prohibits a person from assuming
25 or using the title "certified public accountant" or the
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27 1. The licenses are renewed every two years. Respondent's renewal period runs from April 1
of an odd-numbered year through March 31 of the next odd-numbered year.

1 abbreviation "CPA" unless that person has received from the Board
2 a certified public accountant certificate and holds a valid
3 permit to practice under the provisions of Chapter 1, Division 3,
4 of the Code.

5 6. At all times material herein, Code section 5100
6 has provided in pertinent part that "(a)fter notice and hearing,
7 the Board may revoke, suspend or refuse to renew any permit or
8 certificate" issued by the Board for unprofessional conduct,
9 including but not limited to the willful violation of the
10 Accountancy Act or any rule or regulation promulgated by the
11 Board (section 5100[f]).

12 7. The Board's regulations, codified in Title 16 of
13 the California Code of Regulations, provide for required
14 continuing education in section 80^{2/} et seq. Board Rule 87(a)
15 requires that a licensee complete at least 80 hours of qualifying
16 continuing education during every two-year period immediately
17 preceding permit renewal, and that a licensee submit the
18 statement required by Board Rule 89.

19 8. Board Rule 89(a) requires, with the renewal of a
20 license, the submission of a signed statement, under penalty of
21 perjury, that the requisite number of continuing education hours
22 has been obtained.

23 9. Board Rule 89(b) specifies that a licensee must
24 obtain and retain for four years after license renewal, a
25 certificate of completion or its equivalent to substantiate the
26

27 2. The Board's rules, codified at Title 16 of the California Code of Regulations in sections 1-
99, are hereinafter referred to as "Board Rule." Thus, section 87.6 is Board Rule 87.6.

1 completion on the requisite continuing education.

2 10. Board Rule 89(f) provides that a licensee who is
3 determined not to have completed the required number of hours of
4 qualifying continuing education shall be required to make up any
5 deficiency, and shall be ineligible for active status license
6 renewal until such time as documentation to support the required
7 continuing education has been submitted.

8 11. Board Rule 89(g) provides that the willful making
9 of any false or misleading statement, in writing, regarding his
10 or her continuing education shall constitute cause for
11 disciplinary action.

12 12. Board Rule 94 provides that failure to comply with
13 (these) continuing education rules by a licensee engaged in
14 public practice constitutes cause for disciplinary action.

15 CAUSES FOR DISCIPLINE

16 Unlicensed Practice

17 13. Respondent is subject to disciplinary action
18 pursuant to Code section 5100(f) in conjunction with Code
19 sections 5050 and 5051 in that Respondent practiced public
20 accountancy without holding a valid certificate as follows:

21 a. Respondent practiced public accountancy within the
22 meaning of Code section 5051 on occasions known to Respondent but
23 unknown to complainant during the period from April 1, 1989
24 through March 3, 1994.

25 b. During an engagement that began in December 1993,
26 Respondent represented himself as a CPA in his representation of
27 a tax client in an estate tax matter.

Continuing Education Requirements

14. Respondent is subject to disciplinary action pursuant to Code section 5100(f) in conjunction with Board Rules 87 and 89. The circumstances are that Respondent was requested, in an audit of his continuing education records, to confirm his participation in and satisfactory completion of continuing education required for relicensure.^{3/} Respondent submitted a list, signed under penalty of perjury, attesting to his completion of 64 hours sponsored by the CSCP A and 30 hours sponsored by the San Francisco Tax Club.

15. Incorporating herein the matters alleged in paragraph 14, Respondent is subject to discipline for violation of Board Rule 87 in that Respondent was unable to produce required documentation of completion of the claimed continuing education credits.

16. Incorporating herein the matters alleged in paragraph 14, Respondent is subject to discipline for violation of Board Rule 89 in that he made a false or misleading statement, in writing, regarding his continuing education, in that Board contact with the organizations identified by Respondent does not substantiate the claimed continuing education credit.

17. Incorporating herein the matters alleged in paragraph 14, Respondent is subject to discipline for violation of Code section 5070.5 and Board Rule 87(a) in conjunction with

3. This audit related to the period of almost five years when Respondent's certificate had been expired. As set forth in paragraph 2 above, Respondent renewed his license, claiming the completion of the required continuing education, just prior to the date it would have otherwise cancelled by operation of law in 1994.

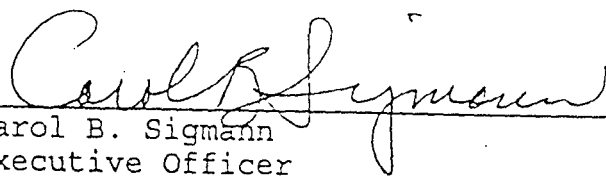
1 Code section 5100(f) in that he engaged in the practice of public
2 accountancy without having completed at least 80 hours of
3 qualifying continuing education during the two-year period
4 immediately preceding permit renewal.

5 PRAYER

6 WHEREFORE, complainant requests that the Board hold a
7 hearing on the matters alleged herein, and that following said
8 hearing, the Board issue a decision:

- 9 1. Revoking or suspending Certified Public Accountant
10 License No. CPA 10044, heretofore issued to
11 Respondent Donald L. Schweitzer; and
12 2. Taking such other and further action as the Board
13 deems proper.

14 DATED: October 28, 1997

15 
16 Carol B. Sigmann
17 Executive Officer
18 Board of Accountancy
19 Department of Consumer Affairs
20 State of California
Complainant

21 C:\JEANNE\SCHWEITZ.ACC
22 (10/21/97)
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